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In the

Supreme Court of the United States

October Term, [redacted] 1970

No. [redacted] 182

L. L. McGUIRE,

Petitioner,

v.

JOHN F. BAKER, ET AL,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITIONER'S REPLY MEMORANDUM

L. L. McGUIRE,
Rt. 2, Midlothian, Texas
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It is only in the past decade that some of the Circuit Courts have extended the protection of the Civil Rights Act to property rights. *Joe Louis Milk Co. v. Hershey, 243 F. Supp. 351 at page 354 (1965).* Previously property rights could not be so protected. *Holt v. Indiana Mfg. Co., 176 U.S. 68, 20 S. Ct. 272, 44 L. Ed. 374 (1900)* And Petitioner can find no opinion of this Court to the con-

trary. In any event there is no authority that property rights can only be protected by the Civil Rights Act and can not be protected by a suit arising under the Constitution. And a suit for compensation for a taking is just as much a suit arising under the Constitution as a suit to recover the land taken.

In *McGuire v. Sadler, 337 F. 2d. 902,* (Appendix p. A-20) a different panel of the Fifth Circuit held McGuire's suit to cancel the sale was one arising under the Constitution, and on remand the District Court cancelled the sale restoring the land to McGuire. But while in title and possession of Bryant, he sold a leasehold interest, being most of the value of the land, to Gulf. Before the land was recovered the leasehold had expired, the land had been drilled with a dry hold, the speculative value had thus been permanently taken. The same right to recover compensation for the taking of the speculative value existed as to recover the land.

Apart from the conspiracy, the Gulf is liable for this permanent taking of the speculative value just as Woodward was liable for conversion in the Dartmouth College case. Whenever one withholds property from a former owner from whom it has been taken or its title impaired by state action, he is liable to the former owner for the withholding. Certainly only state action is prohibited, but the Gulf was the beneficiary of the prohibited state action and is thus liable for the taking. Usually a simple restoration of the property will suf-

fice to do justice, but in this case the restoration did not include the speculative value. The Gulf is not insulated from liability because it purchased from Bryant; it still withheld and used up the leasehold interest.

The question in the United Transport case, 179 F. 2d 466, cited by Gulf, was whether state or federal action impaired the contract, which has no bearing on this case.

The Gulf argues it had no written contract with McGuire, hence the four year statute 5527 does not apply. The State did, the patent to McGuire's predecessors, and the State impaired this contract by patenting the land to Bryant who sold to Gulf. Everything was in writing to which the four year statute applies.

McGuire did not piecemeal his litigation. There is no statutory or common law action in Texas for damages for civil conspiracy as such. Some act damaging to a plaintiff must be done. In October 1962 McGuire had knowledge of the conspiracy to take his land but all he could do was bring an injunction suit to block the taking, which he did, because no damaging act had been done under the conspiracy.

On June 24, 1963, date of sale of McGuire's lands to Bryant, nominal damages accrued. But how could McGuire then know what defendants were going to do with his land? Would they increase its value or diminish its value? These questions could only be answered on June 13, 1967 when the taking was termi-

nated. Of course McGuire was unable to learn of the amount of his damage if any in advance. It was entirely under the control of respondents.

In the Dickinson case the government had control of the dam and the water level behind it. How could Dickinson know in advance what level of water would be maintained and how much of his land would be covered. This Court held that Dickinson could wait until the damages could be ascertained before filing suit.

The taking and keeping of McGuire's land was a continuing wrong shaped and actively managed by respondents throughout the four year period. Everything that was done to the land was not the natural result of the sale as the cutting of the wooden beam in the Houston Waterworks case, but was done by independent acts of respondents.

There is no rule of law or authority that requires a litigant after filing suit, to amend and add new parties and new causes of action. Piecemealing has no bearing on this case. The only question is whether the action was barred.

The Fourteenth Amendment, "nor shall any State deprive any person of . . . property without due process of law"; is not limited to property which may be legally condemned, nor limited to permanent but also prohibits term deprivation, and all property is protected including speculative values. And the Contract Clause

protects all contracts. The Texas ten year limitation statute, Art. 5510, held applicable to suits for compensation for land taking by the Texas Supreme Court in the Brazos River Case, supra, is not limited to lands which may be legally condemned. Therefore there is no rational basis for respondents attempted distinction between this case and cases cited by petitioner.

In Texas, there is no action for "fraudulent conspiracy". The 2 year statute applicable for damages based on fraud does not apply to a fraudulent taking; it is the 10 year statute applicable to suit for compensation for taking that controls; why should a taker by fraud be treated better than any other taker? The 2 year statute for injury to real property does not apply, because his property was not injured. McGuire's legal title and possession was taken, this kept him from selling leases except to Gulf at a loss of most of his land, causing his loss. McGuire had a right to choose his lessee and not to join their dishonest scheme. Thus no 2 year statute applied, only the 10 year taking statute or the 4 year contracts in writing statute.

Finally if we assume this is only a civil rights suit, that McGuire's land was not taken only damaged, that the 2 year statute applies, McGuire still should recover for all damages caused by respondents' acts within the 2 years preceding suit, April 24, 1967, including the withholding of possession and refusing to cancel the vacancy proceedings. This includes all surveying and most of the legal expenses. It includes the destruction of the speculative value because the Gulf held the

lease until July 15, 1965, altho it announced a dry hole on or about Jan. 1, 1964. (Appendix below p. 13). Lease speculators pay little heed to dry hole announcements but watch the deed records to see what the oil company really thinks of the well.

Summary judgments are abhorrent to petitioner. From his limited experience it seems that the one who obtains such a judgment usually attempts to support it in the appellate court by there attempting to try the whole case on unsworn testimony, untested by cross examination. In the Supreme Court, where a petitioner must keep his argument to essentials, he is nagged by the fear that respondents' unsworn testimony and arguments thereon will have an effect on the Court. All petitioner can do is ask the Court to consider one question only, whether this action is barred by the 2 year statute of limitation.

Respectfully submitted

L. L. McGuire

L. L. McGUIRE, *petitioner*

June 26, 1970